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12 BINGO AND PALACE INDIAN GAMING

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**SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO**

FAIR POLITICAL PRACTICES  
COMMISSION, a state agency,

Plaintiff,

v.

SANTA ROSA INDIAN COMMUNITY OF  
THE SANTA ROSA RANCHERIA dba  
PALACE BINGO AND PALACE INDIAN  
GAMING, and DOES I-XX,

Defendant.

Case No. 02AS04544

Date: March 6, 2003

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Joe Gray

**SPECIALLY APPEARING SANTA  
ROSA RANCHERIA'S OBJECTION  
TO CCC'S AMICUS BRIEF AND  
REPLY THERETO**

Date Action Filed: July 31, 2002

Trial Date: None Set

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3 **OBJECTION TO APPLICATION**  
4 **OF CALIFORNIA COMMON CAUSE**  
5 **TO FILE BRIEF AMICUS CURIAE**

6 Specially appearing defendant Santa Rosa Rancheria of Tachi Yokut Indians (the "Tribe")  
7 hereby objects to the application of the California Common Cause ("CCC") to file a brief amicus  
8 curiae in support of FPPC on the Tribe's pending motion to quash service. The grounds for the  
9 Tribe's objection follows. The Tribe requests the Court deny the application of CCC. However, if  
10 the Court wishes to grant the application and consider CCC's proposed amicus curiae, then the Tribe  
11 also asks the Court to consider the Tribe's response to that brief. That proposed response follows  
12 after this objection and grounds therefore.  
13

14 **GROUND FOR OBJECTION**

15 1. Timing. CCC has known about this litigation since it was filed on July 31, 2002. CCC has  
16 known about the present motion since it was filed on January 17, 2003. Despite having knowledge of  
17 all pertinent actions in this case CCC waited until February 10, 2003, to submit his application to file  
18 a brief amicus curiae. CCC's proposed brief amicus curiae was accompanied by massive declarations  
19 and exhibits, none of which were received by tribe's counsel until February 11, 2003, allowing a mere  
20 three days prior to Defendant's reply deadline. The volume and timing of CCC's filing suggests  
21 coordination with FPPC, particularly when issues presented in CCC's proposed amicus curiae add  
22 nothing to the discourse that has not already been expressly stated in FPPC's opposition. Such  
23 coordination suggests attempt to overburden the Tribe in the three full working days during which the  
24 Tribe initially might have made a response to the CCC brief while, at the same time, preparing, filing  
25 and serving its reply brief on the motion to quash. CCC's request has already caused hardship and  
26 delay in this instance by forcing the Tribe to request, and the Court to grant, an extension in filing  
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1 deadlines and a delay in the hearing date until March 6, 2003. CCC has shown no legitimate,  
2 important interest in participating in this case other than to overburden the Tribe with duplicative  
3 responses.

4       2. Duplication. CCC's proposed brief amicus curiae adds nothing to the discourse concerning  
5 the issues involved in the Tribe's motion to quash. Practically every issue raised in CCC's proposed  
6 brief amicus curiae is already raised in the FPPC's opposition to the motion. Although CCC states  
7 that "it would be helpful for this Court to consider additional argument" the Tribe contends that there  
8 are no "additional" arguments within the CCC proposed brief amicus curiae. The Tribe can identify  
9 nothing in the CCC's proposal that is not already amply and ably raised in FPPC's opposition other  
10 than a lengthy argument regarding the constitutionality of the Political Reform Act, which as the  
11 court knows is not a matter of contention. The CCC's proposed brief amicus curiae is duplicative. It  
12 provides no insight or analysis not already before the Court and therefore the application for such  
13 should be denied.  
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16       3. Adequate representation. Both the FPPC and CCC seek to vindicate interests reflected in the  
17 Political Reform Act, Government Code section 81000, et seq. (the "Act"). The FPPC is the  
18 California governmental agency charged with administering the Act. CCC makes no showing that its  
19 interests, which it claims are identical to those of the FPPC in enforcing the act, are not already more  
20 than adequately represented by the FPPC. Indeed, one of the declarations filed by FPPC in support of  
21 its opposition is by James K. Knox, the Executive Director of CCC. Not only does this bolster the  
22 argument above, that CCC's participation in this matter is duplicative, but it also shows that CCC  
23 apparently believes that the FPPC is an adequate representative of the group's interests. If CCC truly  
24 believed that the FPPC could not fairly and adequately represent it's interests one would assume that  
25 CCC would have filed a timely application and would not have had the need to provide the FPPC  
26 with a declaration by the group's Executive Director.  
27  
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1 For the above reasons, the Tribe urges the Court to deny the application of CCC to file its  
2 proposed brief amicus curiae. If, however, the court chooses to grant the application then the Tribe  
3 responds to that brief as follows:

4 **RESPONSE TO BRIEF AMICUS CURIAE OF CALIFORNIA COMMON CAUSE**

5 **I. CALIFORNIA COMMON CAUSE MISINTERPRETS THE**  
6 **NATURE, SCOPE AND MEANING OF THE TRIBE'S STATUS.**

7 California Common Cause ("CCC") makes a comparison between the fundamental rights,  
8 under the United States Constitution, of individuals with inherent rights of sovereignty enjoyed by  
9 Indian tribes. (CCC MPA in Opp. at p. 8). Interestingly, in this comparison CCC somehow  
10 determines that the inherent pre-constitutional rights of Tribes as sovereigns are lesser rights than an  
11 individuals constitutional First Amendment rights. This comparison displays CCC complete lack of  
12 understanding of the nature of a sovereign Indian tribe.

13 Tribes are considerably more than individuals and a Tribe's inherent rights are considerably  
14 greater than individual rights protected under the Constitution. "Tribes are foremost, sovereign  
15 nations." *American Vantage Companies, Inc. v. Table Mountain Rancheria*, 292 F.3d 1091, 1096 (9<sup>th</sup>  
16 Cir. 2002). They retain their original natural rights as aboriginal entities antedating the federal and  
17 state governments. *American Vantage Companies, Inc.*, 292 F.3d at 1096. A Tribe's inherent  
18 sovereign rights, which predate the Constitution, do not, as compared to the rights of individual  
19 citizens, derive from a constitutional or congressional delegation. *United States v. Wheeler*, 435 U.S.  
20 313, 322-323 (1978); *Talton v. Mayes*, 163 U.S. 376, 382-383 (1896). Thus, Tribes enjoy all their  
21 original rights and authority not specifically prescribed by the Constitution or by congressional  
22 action.

23 Individual rights, unlike the rights of a Tribe, are rights based on citizenship. A citizen is:

24 One who, under the Constitution and the laws of the United States, or of a particular state  
25 is a member of the political community, owing allegiance and being entitled to the  
26 enjoyment of full civil rights.  
27  
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1 Black's Law Dictionary (7<sup>th</sup> ed. 1999). Citizens, or individuals, enjoy all of their rights, even their  
2 fundamental First Amendment rights as a grant from the Constitution. Obviously, the same cannot be  
3 said of Tribes, which are not citizens and which enjoy their rights as governments predating the  
4 Constitution. *Talton*, 163 U.S. at 382. CCC's comparison of tribal and individuals rights, which  
5 renders tribal rights inferior to the individual rights accorded by citizenship, is improper and  
6 offensive to the sovereign status of Indian tribes. CCC's entire discussion of the validity of the  
7 Political Reform Act under the First Amendment is irrelevant.

## 9 II. CALIFORNIA COMMON CAUSE MISREPRESENTS THE 10 NATURE AND SCOPE OF TRIBAL SOVEREIGN IMMUNITY

11 CCC claims that "the doctrine of tribal immunity from suit is of 'limited character'" [citing]  
12 *U.S. v. Wheeler*, 435 U.S. at 323. (CCC MPA in Opp. at p. 3). Again, CCC has misrepresented the  
13 language of the Court.<sup>1</sup> *U.S. v. Wheeler* states that a Tribe's "sovereignty" is of "limited character."  
14 435 U.S. at 323. The Court does not state that a Tribe's sovereign immunity from suit is of "limited  
15 character." The distinction may seem small but it is vitally important. This distinction, and the case  
16 law recognizing it, eliminate the CCC's argument that tribal sovereign immunity is a "limited  
17 doctrine" that is determined on a case by case basis after balancing the various tribal, federal, and  
18 state interests in a particular instance. *Bishop Paiute Tribe v. County of Inyo*, 291 F.3d 549, 559 (9<sup>th</sup>  
19 Cir. 2002); *Pan American Co. v. Sycuan Band of Mission Indians*, 884 F.2d 416, 419 (9<sup>th</sup> Cir. 1989)

20  
21 There is no question, and the Tribe does not dispute, that Tribes as sovereigns are subject to  
22 the plenary power of Congress and thus no longer enjoy the full attributes of sovereignty. However,  
23 as the omitted remainder of the quote from *U.S. v. Wheeler* clearly states:

24 [U]ntil Congress acts, the tribes retain their existing sovereign powers. In sum,  
25 Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or  
26 statute [.]

27 <sup>1</sup> CCC makes similar misrepresentations where it paraphrases *Mescalero v. Jones*, 411 U.S. 145, 148 (1973), as having  
28 said "As a common law doctrine, 'generalizations' about tribal sovereign immunity from suit, like the related doctrine of  
tribal sovereign immunity from regulation, are 'particularly treacherous.'" (CCC's MPA in Opp. at p. 3).

1 *U.S. v. Wheeler*, 435 313, 323 (1978). Thus, tribal “sovereignty” in general is of a “limited  
2 character” because Congress has the ultimate authority as to the extent and nature of that sovereignty,  
3 i.e., Congress could limit a Tribe’s immunity through congressional action at any time. However, as  
4 *U.S. v. Wheeler* instructs, absent congressional action Tribal sovereignty remains fully intact.

5  
6 One aspect of a Tribe’s immunity that Tribes retain in its fullest form is inherent sovereign  
7 immunity from suit. Under the doctrine of tribal sovereign immunity, a Tribe is immune from suit,  
8 unless Congress or the Tribe has expressly and unequivocally waived the Tribe’s immunity. *C & L*  
9 *Enterprises v. Potawatomi Indian Tribe*, 532 U.S. 411, 414 (2001); *Kiowa Tribe v. Manufacturing*  
10 *Technologies, Inc.*, 523 U.S. 751, 754 (1998).<sup>2</sup> “It is settled that a waiver of sovereign immunity  
11 ‘cannot be implied but must be unequivocally expressed.’ *Santa Clara Pueblo v. Martinez*, 436 U.S.  
12 49, 58 (1978) (emphasis added); accord, *Smith v. Hopland Band of Mission Indians*, 95 Cal.App.4<sup>th</sup>  
13 1, 7 (2002).

14  
15 Furthermore, the federal courts have held that the “sovereign immunity of Indian tribes is  
16 similar to the sovereign immunity of the United States; neither can be sued without the consent of  
17 Congress.” *People of the State of California v. Quechan Tribe of Indians*, 595 F.2d 1153, 1155 (9<sup>th</sup>  
18 Cir. 1979). Thus, a Tribe’s immunity is “coextensive with that of other sovereigns, including the  
19 United States.” *Pan American Co. v. Sycuan Band of Mission Indians*, 884 F.2d 416, 418 (9<sup>th</sup> Cir.  
20 1989). Tribal sovereign immunity extends to suits brought by other sovereigns, including states.  
21 *Blatchford v. Native Village of Noatak*, 501 U.S. 775, 782 (1991).

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26 <sup>2</sup> CCC’s attempts, throughout its Amicus brief, to limit *Kiowa* are inappropriate. CCC continually points to language of  
27 the Supreme Court expressing disfavor with doctrine of tribal sovereign immunity. This by no means weakens the impact  
28 of the doctrine. Indeed, if anything, the fact that the Supreme Court expressed such disfavor with the doctrine yet  
nevertheless made perhaps the broadest statement ever regarding the reach of the doctrine, adds strength to its application  
and power. The Court’s dicta in *Kiowa* can only be considered a plea to Congress to relieve the Court of the mandatory  
application of tribal sovereign immunity in all cases, such as this case, where there are no valid waivers thereof.

1 Finally, tribal sovereign immunity is a mandatory doctrine. As the Ninth Circuit has stated:  
2 [S]overeign immunity is not a discretionary doctrine that may be applied as a remedy depending on  
3 the equities of a given situation.” *Pan American*, 884 F.2d at 419.

4 Sovereign immunity involves a right, which Courts have no choice, in the absence  
5 of a waiver, but to recognize. It is not a remedy, as suggested by California’s  
6 argument, the application of which is within the discretion of the Court.  
7 *People of the State of California v. Quechan Tribe of Indians*, 595 F.2d 1153, 1155 (9<sup>th</sup> Cir. 1979).

8 In sum, CCC’s statement that “any analysis of its [tribal sovereign immunity’s] application to  
9 a given case is necessarily context specific” is flat wrong.<sup>3</sup> (CCC’s MPA in Opp. at p. 3). It is not  
10 the interests of the state or the context of the situation that determine whether a tribe can be sued,  
11 even by a state regulatory agency to enforce state law. When it comes to this determination, as the  
12 Ninth Circuit and the United States Supreme Court have concluded, the state’s interests, and the  
13 context of the situation are irrelevant on this issue. *United States v. United States Fidelity &*  
14 *Guaranty, Co.*, 309 U.S. 506, 511-516, (1940); *Bishop Paiute Tribe*, 291 F.3d at 559; *Pan American*  
15 *Co.*, 884 F.2d at 419. The determining factor in this instance, and the only factor for the Court to  
16 consider, with regard to the Tribe’s amenability to suit, is whether the Tribe, or Congress, has clearly,  
17 expressly, and unequivocally waived the Tribe’s immunity. Thus, CCC’s lengthy discussion of the  
18 important state interests in this instance have no bearing on whether the FPPC can bring suit against  
19 the Tribe to enforce the Political Reform Act.<sup>4</sup>  
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23 <sup>3</sup> CCC does not cite a single case that supports the argument that tribal sovereign immunity is a “context specific”  
24 analysis. CCC cannot because there are none. The majority of the cases that CCC cites do not even speak on the issue of  
25 tribal sovereign immunity. (*U.S. v. Wheeler*, 435 U.S. 313 (1978) (Tribe’s authority over criminal actions on the  
26 reservation); (*Mescalero v. Jones*, 411 U.S. 145 (1973) (state taxation of off reservation enterprise); (*California v.*  
27 *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) (state’s regulatory power under P.L. 280). Of the cases CCC  
28 does cite that analyze tribal sovereign immunity, not one of them even considers the states interests or in any way  
conducts the balancing of interest analysis as CCC suggests. Instead, the analysis focuses on the sole issue of whether the  
Tribe, or Congress, waived the Tribe’s immunity.

<sup>4</sup> The Tribe does not dispute that there is a state’s interest in regulating the state electoral process. To this end, the Tribe  
has offered to enter into a government-to-government agreement to ensure the purposes of the Act are fulfilled and the  
state’s interests protected. Direct enforcement is not the proper way to achieve this goal as the Tribe is immune from suit.

1           **III. THE TRIBE'S PARTICIPATION IN THE CALIFORNIA**  
2           **ELECTORAL PROCESS DOES NOT CONSTITUTE A WAIVER.**

3           There is no issue in this case as to whether Congress has waived the Tribe's immunity from  
4           suit. It has not. There is no dispute on this issue. Similarly, there is no question that the Tribe has  
5           not expressly waived its immunity. It has not, and CCC does not directly argue that it has. The only  
6           possible issue in this case is whether the Tribe's participation in the California electoral process  
7           impliedly waives the Tribe's immunity from suit. It does not.

8           It is settled that waiver of tribal immunity cannot be implied. *C & L Enterprises, Inc., v.*  
9           *Potawatomi Indian Tribe*, 532 U.S. 411, 418 (2001); *Smith v. Hopland Band of Mission Indians*, 95  
10          Cal.App.4<sup>th</sup> 1, 7 (2002). CCC argues in a footnote that tribal sovereign immunity may be clearly,  
11          expressly, and unequivocally waived through tribal conduct. (CCC MPA in Opp. at p. 12, fn. 1).  
12          However, none of the cases CCC cites stand for the proposition that conduct alone, without some  
13          other expression, constitutes a waiver of immunity. In *C & L Enterprises*, the Court conducted an  
14          extensive analysis of written contract provisions and an arbitration agreement that expressly invoked  
15          the jurisdiction of Oklahoma State courts. *C & L Enterprises*, 532 U.S. at 415-420. The Tribe's  
16          conduct of "engaging" in a commercial transaction was combined with written agreements, prepared  
17          and provided by the Tribe, expressly indicating an intent on the part of the Tribe to submit to the  
18          jurisdiction of the state court. *Id.* This is not the case here. There are no written, or other,  
19          agreements that in any way be said to evince the Tribe's intent to submit to state jurisdiction.  
20          agreements that in any way be said to evince the Tribe's intent to submit to state jurisdiction.

21          Similarly, *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765 (D.C. Cir.  
22          1986), has no application to this case. The ultimate conclusion of the court was that:  
23          1986), has no application to this case. The ultimate conclusion of the court was that:

24                 Unlike a situation where a tribe enters a suit as a plaintiff, anticipating that it can  
25                 only improve or maintain its *status quo*, a tribe intervening as a defendant fully  
26                 realizes that it might lose what it already has—preserving its *status quo* is the  
27                 whole point of the intervention. By so intervening, a party 'renders itself  
28                 vulnerable to complete adjudication by the federal court of the issues in litigation  
                    between the intervenor and the adverse party.'

1 *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765, 773 (D.C. Cir. 1986). It would  
2 make no sense for a Tribe to be allowed to intervene as a defendant for the purpose of protecting  
3 what it already has and then allow the tribe to avoid an adverse decision with respect to what it is  
4 attempting to protect by invoking the doctrine of tribal sovereign immunity.

5  
6 This is not the situation this Court faces. Unlike intervening in a case as a defendant, the  
7 Tribe by participating in the state electoral process, as regulated by the Political Reform Act had no  
8 reason to believe that it might be subjecting itself to unknown liability, because the Act as written  
9 does not include Indian tribes within its purview. Therefore, at no point, until the FPPC instituted  
10 this action did the Tribe have any notice that anyone believed that the Act applied to tribes.<sup>5</sup>

11 Finally, CCC cites *Smith v. Hopland Band of Pomo Indians*, 95 Cal.App. 4<sup>th</sup> 1 (2002)  
12 for the proposition that a tribe need not “subjectively understand” that its *conduct* may  
13 constitute a waiver of immunity. Again, as with *C & L Enterprises*, *Smith* is not quite a simple  
14 and clear cut as CCC would have the Court believe. *Smith*, like *C & L Enterprises*, involved  
15 an arbitration clause in a negotiated contract entered into by a representative of the Tribe duly  
16 authorized by the Tribal Council to negotiate and execute contracts on behalf of the Tribe.<sup>6</sup>  
17 While the Tribe stated, a statement which the court disregarded, that it did not “subjectively  
18 believe” that an arbitration clause could waive the Tribe’s immunity from suit, the court, in  
19 *Smith*, did not in anyway make that statement a substantive part of its analysis or decision.  
20 Rather, the court focused on the fact that the Tribe had full knowledge of the terms of the  
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24 <sup>5</sup> This point is argued more extensively in Tribe’s Reply to Plaintiff’s Opposition to Motion to Quash. The Act by its  
25 own terms does not include Indian tribes within the definitions of “person[s]” covered by the Act. As argued above the  
26 Tribe is not a person, nor is the Tribe “any other organization or group of persons acting in concert” to which the Act  
27 would apply. See, e.g., *Merrion v. Jicarilla Apache*, 455 U.S. 130, 140, 102 S.Ct. 894,903(1981).

28 <sup>6</sup> Interestingly, the Tribe approved the contract at question in *Smith* prior to the Supreme Courts decision in *C & L Enterprises*, therefore the Tribe put forth the argument that it did not “subjectively believe” that the arbitration clause waived the Tribe’s immunity. As the Court can imagine, *C & L Enterprises*, has had quite an impact on negotiation of arbitration clauses between Tribes and those they enter into contracts with. Had the Supreme Court issued its decision sooner, it is entirely likely the terms of the contract would have been altered and the Tribe certainly would not have made an argument regarding its subjective belief with respect to negotiated arbitration clauses.

1 contract and arbitration clause expressly providing for application of state law and jurisdiction  
2 "in any court having jurisdiction thereof." *Smith*, 95 Cal.App.4<sup>th</sup> at 8-9.

3 The analysis in *Smith*, is nearly identical to that in *C & L Enterprises*. The decision was not  
4 one based on the *conduct* of the Tribe. It was a decision based on the express terms of an agreement  
5 validly entered into by the Tribe *as evidenced* by tribal conduct. Such is not the case here. The Tribe  
6 has never signed any agreement with the FPPC, the State of California, or any other body or entity,  
7 that in anyway indicates an intent on the part of the Tribe to waive it's immunity for enforcement of  
8 the Political Reform Act in state court.

9 The bottom line in this case is that neither FPPC, nor CCC, can point to any express waivers  
10 of immunity. Every attempt to show that the Tribe is amenable to suit in this instance requires this  
11 Court to find an implied waiver of immunity. This cuts squarely against the "fundamental principle  
12 that tribal sovereign immunity remains intact unless surrendered in express and unequivocal terms."  
13 *Pan American*, 884 F.2d at 420.<sup>7</sup> As well as the axiom that a "waiver of sovereign immunity 'cannot  
14 be implied but must be unequivocally expressed.'" *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58  
15 (1978) (emphasis added); *accord*, *Smith*, 95 Cal.App.4<sup>th</sup> at 7.

16 Based on these well established principles of law, there simply is no waiver in this  
17 instance. Congress, indisputably has not waived the Tribe's immunity, likewise the Tribe has  
18 not expressly waive its immunity by either expression or by participation in the California  
19 political process. Therefore, because of the established rule against implied waivers the Tribe's  
20 immunity from suit bars the ability of the FPPC to enforce the Political Reform Act against the  
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22  
23  
24  
25 <sup>7</sup> *Pan American* also explained that *United States v. Oregon*, 657 F.2d 1009 (9<sup>th</sup> Cir. 1981) "probably tests the outer limits  
26 of *Santa Clara Pueblo's* admonition against implied waivers. (cite). *Oregon*, similar to *Wichita* involved a situation  
27 where the Tribe intervened in a federal court case, as party plaintiff, to protect tribal fishing rights and also entered into a  
28 "fishing conservation agreement" that expressly stated that the parties agree to submit the issues to federal court for a  
determination. *U.S. v. Oregon*, 657 F.2d at 1016. Thus *Oregon*, is consistent with the argument of the Tribe in this  
instance, that mere *conduct*, alone, does not waive a Tribe's immunity. There must be conduct combined with some  
absolute knowledge that Tribe is purposefully and voluntarily subjecting itself to the known potential liability before a  
Tribe can be deemed to have waived its immunity. Even then, this is the "outer limits" of waivers of immunity.

1 Tribe. No matter how vigorously the CCC argues otherwise, and no matter how badly it distorts  
2 the law, it cannot change the reality that tribal sovereign immunity is *not* a "limited common law  
3 doctrine." Tribal sovereign immunity is a mandatory doctrine that remains in full effect unless  
4 there is a valid waiver thereof. There is not and in this instance the Tribe is simply, and  
5 absolutely, immune from suit.  
6

7 **IV. CCC IS INCORRECT WHEN IT DECLARES THAT**  
8 **ENFORCEMENT OF THE ACT AGAINST THE TRIBE**  
9 **INFRINGES ON NO SOVEREIGN INTEREST OF THE TRIBE.**

10 The CCC states that this Court's "exercising jurisdiction over this suit implicates none of the  
11 Santa Rosa/Palace Bingo's sovereign interests." (CCC MPA in Opp. at p. 2). This statement is  
12 incorrect. The exercise of state court jurisdiction over a sovereign Indian tribe without the Tribe's  
13 consent thereto, in and of itself, implicates the Tribe's sovereign interests. Tribal sovereign immunity  
14 "seeks to preserve their autonomy, protects tribes from suits in federal and state courts." *Wichita and*  
15 *Affiliated Tribes of Oklahoma*, 788 F.2d at 771.

16 Thus, as it relates to the Tribe's overall status as a sovereign, Tribes always have an interest,  
17 as do all sovereigns, in not being haled courts of another sovereign against their will. This interest  
18 cannot be stated strongly enough. Without sovereign immunity a Tribe would continually be the  
19 subject of suits of any nature, rendering it impossible for the Tribe to fully pursue the ultimate goal  
20 of sovereignty - self-governance. This interest is so strong that courts put it on the highest of  
21 platforms in terms of protection of the Tribes as sovereigns. *Three Affiliated Tribes*, 476 U.S. 889-  
22 890.  
23

24 Furthermore, the Tribe has an enormous interest in self-government. This interest is the very  
25 basis of tribal existence. This interests is supported by the "overriding goal" of federal Indian policy  
26 which is designed toward "encouraging tribal self-sufficiency and self-development." *California v.*  
27  
28

1 *Cabazon Band of Mission Indians*, 480 U.S. 202, 216-217 (1987). If the Tribe did not enjoy  
2 sovereign immunity from suit this policy could be undermined.

3 Finally, as a practical matter, nothing could be more important to the development of Tribal  
4 governments than the acknowledgement by, and respect of, other similar sovereigns. Tribal  
5 government is strengthened by states showing Tribes respect and dealing with Tribes on a  
6 government-to-government basis. This is precisely the route the Tribe has suggested in this instance.  
7 The Tribe's status as a self-governing sovereign is severely undermined by actions such as those of  
8 the FPPC and CCC whereby the state seeks to undermine the Tribes inherent sovereign immunity and  
9 treat the Tribe as it does any other "person" within the state. As discussed above, Tribes are not  
10 persons or mere aggregations of persons, Tribes are sovereign governments that deserve respect as  
11 such. Tribal sovereign immunity is a critical component of that status.  
12

13  
14 The one case that the CCC cites as being relevant to this instance, *State of Minnesota v. Red*  
15 *Lake DFL Comm.*, 303 N.W. 2d 54, 56 (Minn. 1981) is inapposite. CCC cites *Red Lake* for the  
16 proposition that forced compliance with the state's campaign disclosure requirements would not  
17 interfere with tribal self-governance. CCC's reading of the case, and its reasoning based thereon, are  
18 both flawed. *Red Lake* involved the State of Minnesota's attempts to regulate a political action  
19 committee comprised of tribal members operating within the boundaries of the reservation. *Red*  
20 *Lake*, 303 N.W. 2d at 56. The state court found that it had jurisdiction over the actions of the  
21 committee because the State of Minnesota had authority to:  
22

23 required that persons subject to the jurisdiction of the Red Lake Band submit to  
24 the governing authority of the State of Minnesota with respect to activities  
occurring within the territorial limits of Minnesota.

25 *Id.* at 55. The critical phrase in *Red Lake*, and the phrase that undermines the CCC claim that *Red*  
26 *Lake*, is directly applicable to this case is the phrase "*persons subject to the jurisdiction of the Red*  
27 *Lake Band*" i.e., individual members of the Tribe. The Tribe was not a party in *Red Lake* and the  
28

1 State was not attempting to regulate the Tribe itself. Therefore, *Red Lake* never implicated the  
2 Tribe's sovereign immunity or other interests of the Tribe in avoiding regulation by the state. The  
3 defendants in *Red Lake* were simply a political action committee and individuals acting in their  
4 individual capacities. The issue of tribal sovereign immunity never arose in *Red Lake* because no one  
5 ever made a claim of immunity.  
6

7 Moreover, in a similar case, also in Minnesota, where tribal interests were implicated because  
8 an official of the Tribe was named as a defendant, the Minnesota Court of Appeals upheld the  
9 sovereign immunity of the tribal official whose on-reservation actions had off-reservation effects.  
10 *Driver v. Peterson*, 524 N.W.2d 288, 291 (Minn.Ct.App., 1994). The court in *Driver v. Peterson*,  
11 noted that the determination of the tribal officials sovereign immunity from suit, as derived from the  
12 Tribe's inherent immunity, did not depend on the merits of the case, even where "one element of a  
13 claim occurred outside the reservation." 524 N.W.2d at 291.  
14

15 These two Minnesota cases hold, consistent with other courts, that Tribes and Tribal officials  
16 enjoy immunity for Tribal actions, even where there is some off-reservation conduct. Individual  
17 members, however, who do not enjoy inherent sovereign immunity are subject to the jurisdiction of  
18 the state. The difference is not only the presence of immunity in one case, and it's absence in  
19 another. The difference is the presence of the Tribe, or tribal officials, in the case and the harm that  
20 would be done to Tribal interests in self-government and tribal sovereignty, when a state attempts to  
21 impose state statutes directly on a Tribe through suit without the Tribe's consent.  
22

23 The Tribe's interest in self-government, and tribal sovereign immunity from suit is clear.  
24 That interest is real and, as the United States Supreme Court has stated in *Kiowa Tribe*, 523 U.S. at  
25 754, *Blatchford*, 501 U.S. at 782, *Puyallup*, 433 U.S. at 172-179 that interest is protected.

26 ///

27 ///

1           **V.     THE TRIBE IS NOT ATTEMPTING TO “FLOUT THE LAW” BY**  
2           **ASSERTING ITS SOVEREIGNTY**

3           The CCC implies that the Tribe is purposefully attempting to undermine the Political Reform  
4     Act by “flouting the law” and using tribal sovereign immunity as a shield. (CCC MPA in Opp. at  
5     p.1). This is decidedly not the case. The Tribe is not in any way willfully trying to sabotage the  
6     Political Reform Act or the government of the State of California. The Tribe fully agrees with the  
7     purposes of the Act. The Tribe has substantially complied with the Act, although not on the precise  
8     timeline, or in the precise form that the state would like.

9           Although the Tribe would voluntarily comply with the purposes of the Act, as a sovereign it is  
10    not subject to direct enforcement of the Act’s requirements by suit. The Tribe, as it has stated  
11    throughout this process, is willing to discuss and enter into an appropriate agreement whereby the  
12    FPPC and the Tribe can each attain their respective goals. What the Tribe is not willing to do is to  
13    denigrate its status as a separate sovereign nation by allowing the FPPC to assert unwarranted  
14    jurisdiction over the Tribe. The Tribe would have the FPPC and the State of California recognize the  
15    Tribe’s status as a sovereign. The state has shown a willingness to do this in other instances such as  
16    the Tribal-State Gaming Compact.  
17

18           A modicum of respect for the Tribe and a government-to-government negotiation regarding  
19    the Tribe’s compliance with the purposes of the Act would also eliminate both the FPPC’s and the  
20    CCC’s complaint about its inability to perform essential functions related to the California electoral  
21    process.<sup>8</sup> This approach is entirely adequate to meet the purposes of the Act. If this approach is too  
22    cumbersome for the FPPC then the parties could take their respective positions at the bargaining table  
23    24

25           <sup>8</sup> The CCC’s and FPPC’s claims on this issue are completely unwarranted in any instance. The FPPC contrary to what the  
26    CCC claims already has alternative means by which to fulfill the purposes of the Act. Government Code § 90001 sets  
27    forth elaborate and comprehensive procedures requiring reporting by recipients of donations and by lobbyists. By  
28    combining these reports with audits by the FPPC the agency can achieve precisely the same degree of verification and  
  compliance with the Act as provided by dual reporting. This may make the FPPC’s job slightly more difficult, however,  
  the efficiency and ease of a state agency in completing its statutory task should not be a consideration when determining  
  whether a state can run roughshod over a Tribe’s inherent immunity from suit.

1 and make a deal that respects the Tribe's status as a sovereign while simultaneously allowing the  
2 FPPC to fulfill its statutory duties.

3 **VI. CCC'S CHARACTERIZATION OF THE TRIBE AND ITS**  
4 **PURPOSES IS OFFENSIVE AND UNSUBSTANTIATED.**

5 Throughout CCC's amicus brief the organization repeatedly makes comments with regard to  
6 the Tribe that are inappropriate, disrespectful and offensive. For example, CCC subordinates the  
7 inherent sovereign rights of Tribes to those of individual citizens. (CCC MPA in Opp. at p. 8).  
8 Similarly, at various points in its brief CCC makes presumptive and incorrect statements that Tribes  
9 have no sovereign interests in the sanctity of their sovereign status. CCC implies that the Tribe will  
10 act purposefully to undermine the California Political Reform Act, the FPPC's ability to enforce the  
11 Act, and the California political system in general by serving "as conduits for undisclosed  
12 contributions from other special interest groups (such as non-Indian businesses that want to build  
13 casinos on Indian land of benefit from them), who may want to conceal their influence of California's  
14 political process." (CCC MPA in Opp. at p. 11). This statement is not only unsubstantiated but  
15 offensive to the Tribe in the extreme.  
16

17  
18 The Tribe has evidenced no intention to disrupt any component of the California process. The  
19 implication, that the Tribe would in any way use its inherent and sacred tribal sovereign immunity in  
20 a nefarious attempt to undermine the California state government is simply wrong. (Declaration of  
21 Chairman Mike Sisco at paragraphs 4, 8, 9). Similarly, any argument that the Tribe would essentially  
22 barter its sovereignty to others who seek secretly to influence state elections or to otherwise disrupt or  
23 discredit the state electoral process shows a complete lack of knowledge and respect on the part of the  
24 CCC of the sacred nature of tribal sovereign immunity.  
25

26 In *California v. Cabazon*, supra fn 3, the United States faced, and rejected a similar argument  
27 on part of the State of California. The State in *Cabazon* argued that it had a strong interest in  
28

1 regulating tribal bingo operations because of their "attractive[ness] to organized crime." The Court  
2 resoundingly rejected this argument as speculative and unsupported by evidence. *Cabazon*, 480 U.S.  
3 at 221-222. Importantly, the Court noted that even though the State had an obvious interest in  
4 "preventing the infiltration of the tribal bingo enterprises by organized crime" that interest "does not  
5 justify state regulation of the tribal bingo enterprises."<sup>9</sup>  
6

7 Just as the Court in *Cabazon* was not impressed with the State's unsubstantiated predictions  
8 of tribal collaboration in nefarious criminal activity, this Court should not be impressed by CCC's  
9 unsubstantiated claims of pending doom for the California political system. The CCC has no support  
10 for this claim and can point to no instance where the Tribe has ever operated in collusion with any  
11 other party that sought to have a negative impact on the Act, the FPPC or the political process itself.  
12 To do so would be a denigration of tribal sovereignty that the Tribe would never allow.  
13

## 14 CONCLUSION

15 The Tribe has shown that each of the arguments put forth by the CCC are without merit.  
16 Regardless of how hard the CCC argues in support of the FPPC it cannot change the law, and it  
17 cannot change the reality that the Political Reform Act does not apply to the Tribe. Even if the Act  
18 did apply to the Tribe, the CCC cannot avoid the reality that the Tribe is absolutely immune suit to  
19 enforce the Act.  
20


21 Tribal sovereign immunity is a mandatory doctrine that Tribes enjoy on the same basis of all  
22 other sovereigns. Application of the doctrine is not dependant on a balancing of interests. Indeed all  
23 interests, other than the Tribes interest in protecting its sovereignty, are irrelevant and do not enter the  
24

25 <sup>9</sup> *California v. Cabazon* was a consideration of the state's regulatory authority over the Tribe under P.L. 280, a federal  
26 statute that granted states a measure of civil authority over tribal members in California and other states. *Cabazon* held  
27 that civil jurisdiction was limited to jurisdiction over criminal/prohibitive laws of the state. 480 U.S. at 221-222. With  
28 regard to civil/regulatory law's, such as the Political Reform Act, the Court held that the state did not have regulatory or  
enforcement jurisdiction. Additionally, the Court has also held that P.L. 280 was only a grant of authority over individual  
members of the Tribe and not the Tribe itself. *Bryan v. Itasca County*, 426 U.S. 373, 389 (1976). P.L. 280 does not  
constitute a waiver of a Tribe's sovereign immunity. *Three Affiliated Tribes*, 476 U.S. at 892.

1 analysis. The only analysis applicable to this case is whether the Tribe or Congress has clearly,  
2 expressly, and unequivocally waived the Tribes immunity. There is no such waiver in this instance.  
3 The Tribe in this instance is immune from suit. The Court should grant the Tribe's Motion to Quash  
4 Service of Summons and First Amended Complaint.

5 Dated: February 28, 2003

6 MONTEAU & PEEBLES LLP  
7 CHRISTINA V. KAZHE  
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**PROOF OF SERVICE BY MAIL**  
(CCP 1013a)

I declare that I am employed with the law firm of Monteau & Peebles, L.L.P., whose address is 1001 Second Street, Sacramento, California 95814-3201; I am not a party to the within cause; I am over the age of eighteen years; and I am readily familiar with Monteau & Peebles, L.L.P.'s practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Monteau & Peebles, L.L.P.'s business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Monteau & Peebles, L.L.P. with postage thereon fully prepaid for collection and mailing

I further declare that on the date hereof I served a copy of:

**SPECIALLY APPEARING SANTA ROSA RANCHERIA'S  
OBJECTION TO CCC'S AMICUS BRIEF AND REPLY THERETO**

on the following by placing true copies thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Monteau & Peebles, L.L.P., 1001 Second Street, Sacramento, California 95814-3201, in accordance with Monteau & Peebles, L.L.P.'s ordinary business practices:

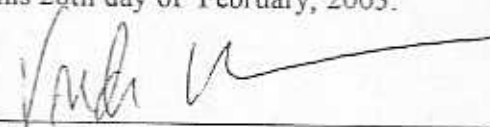
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Sacramento, California, this 28th day of February, 2003.

  
Vonda Ricciardi